



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAROK**

**SUCCESSION CAUSE NO.12 OF 2019**

**IN THE ESTATE OF THE DECEASED OF SAITOTI KIDIIS**

**RESIAN ENE KIDIIS.....PETITIONER/RESPONDENT**

**VERSUS**

**GEORGE SANKALE KIDIIS.....OBJECTOR**

**JUDGEMENT**

1. The objector sought revocation of the confirmed grant on the basis that he was not consulted when this cause was filed in court. The objector called one witness Njine Macharia (Pw 3) in support of his objection.

2. The petitioner opposed the objection on the basis that the objector is not the son of the deceased.

**The case for the objector.**

3. The objector testified that her mother was the first wife of the deceased and the petitioner was the second wife. It was his evidence that the petitioner is his step mother. He filed the objection because the petitioner filed a succession cause without consulting him and his seven siblings. It was his evidence that after the death of his mother and father the petitioner chased them and demolished his mother's house. After the death of their father, he decided to follow the share of his mother in the estate of the deceased. His brother (John Kimani) refused to join him in pursuing his mother's share in the estate of the deceased.

4. He went to the children's office, who referred him to the office of chief Samson Kahare. He was not satisfied with the way the chief handled the matter as the petitioner did not turn up and the chief did not take against her. He then went to the D. C'S office, who referred him to the office of the D.O.

5. At the office of the D.O. objector and the petitioner went there with their witnesses. The panel at the office of the D.O gave him two acres. The respondent refused to give him two acres. She then went and filed a succession cause in 2015 in Nakuru High Court. The panel at the office of the D.O. required a DNA to be carried out to establish that the objector was the child of the deceased. Since the objector was not satisfied with the decision of the panel of the D.O., the objector filed a case before the Maasai Council of Elders.

6. The objector admitted in cross examination that he was not given the Maasai traditional ring, which signifies that he is the son of the deceased and has a right to inherit from his father. The objector in response to the DNA being carried out stated that: "I will not accept DNA to be done for me and Alfred Migwi."

7. The objector also called Noah Lanchoine Ole Masikonde (Pw 2), whose evidence the objector dispensed with after Pw 2 refused to come to court to testify.

8. The objector the called Njine Macharia (Pw 3), who is his maternal uncle. Pw 3 testified that the deceased married the mother of the objector and paid dowry in money. The money was paid to his elder brother, Duncan Kirabi. The whole amount was Shs 2,000/- in 1968. Pw 3 was referred to his statement in cross examination in which it was recorded that: "I can recall that my sister Mary Wanjiku was married to one Saitoti Kidiis and they left Njoro and went in Kisiriri area, but I do not anything about dowry." Pw 3 then testified in cross examination that he did not know anything about the dowry paid by Saitoti.

9. In cross examination, Pw 3 testified that he did know why the younger brother of the objector was not interested in the estate of the deceased.

**The case for the petitioner/respondent**

10. The respondent (Rw1) testified in support of the opposition to the objection. She called Parmunke Ntoikwan (Rw 2), who is a brother in law to the husband of the petitioner. She also called Kasaine Ole Esho (Rw 3), who is the chairman of the Maasai Council of Elders. Finally, she called Samson Kahare (Rw 4), who is the chief of Enabelibeli location.

11. The respondent testified that she is the first and only wife of the deceased. She also testified that she filed a succession cause in the High Court in Nakuru to enable distribute the properties of the deceased. The objector then filed an objection. She testified that she used to see the objector at Kisiriri centre. It was also her evidence that the objector went to the same school with her children at a primary school. She too testified that she never saw the objector in her home during the life time of the deceased.

12. Furthermore, Rw 1 testified that there is no woman who came to claim the deceased as her husband. Kidiis is a family name in their clan.

13. Rw 2 supported the evidence of the respondent. He also testified that the mother and father of the objector rented a house at Kisiriri centre. Rw 2 also testified the father of the objector is alive, although he does not know his name. Furthermore, he also testified that the deceased did not have another wife.

14. Rw 2 further testified that after they had a family meeting they found that the objector was not the son of the deceased. It was his evidence that Kidiis is a clan name and is used by many families.

15. Kasaine Ole Esho (Rw 3), who is the chairman of the Maasai council of elders testified the objector filed a case before his council claiming that he is the son of the deceased. The respondent also filed a case before his council claiming that the objector was not the son of the deceased.

16. The council moved to the ground and interrogated the witnesses of both the respondent and the objector. They concluded the objector was not the son of the deceased.

17. The respondent signed the resolution of the council while the objector refused to sign it.

18. Chief Samson Kahare (Rw 4) of Enabelibeli, was the last witness called by the respondent. His evidence was that after he had interrogated the objector he found that the objector was not the son of the deceased.

#### **Issues for determination**

I have considered the evidence of both parties. As a result, I find the following to be the issues for determination.

- 1) Whether to objector was the son of the deceased.
- 2) Who bears the costs of this application?

#### **Issue 1**

19. I find that the evidence of the objector and his witness is incredible. He testified that he and his brother would not want to undergo DNA testing to ascertain whether he is the son of the deceased or not. Furthermore, he also testified under cross examination that the deceased did not put a Maasai ring in his arm, which signifies that he is the son of the deceased and has a right to inherit.

20. Furthermore, Njine Macharia (Pw 3), materially contradicted himself in his evidence. First, he testified that the deceased married the mother of the objector and paid dowry in money in the sum of Shs 2,000/-. Later when he was referred to his statement Pw 3 testified that: *"I can recall that my sister Mary Wanjiku was married to one Saitoti Kidiis and they left Njoro and went in Kisiriri area, but I do not anything about dowry."*

21. It is clear therefore that the two witnesses for the objector are incredible and unreliable. I find the evidence of the respondent and his witnesses credible and cogent. Simply put there is overwhelming evidence that the objector is not the son of the deceased.

22. In the premises, I find that the application of the objector fails and is hereby dismissed.

#### **Issue 2**

23. I make no order as to costs.

**Judgment signed, dated and delivered at Narok this 26<sup>th</sup> day of October, 2020 in the presence of Mr. Masikonde holding brief for Mr. Kamwaro for the Petitioner/Respondent and the objector.**

**J. M. BWONWONG'A.**

**J U D G E**

**26/10/2020.**